IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

-

WRIT PETITION NO : 8210 of 2004

Between:

M/s Mahindra & Mahindra Financial Services Pvt. Ltd
D.No.8-2-156/A, First Floor, Upstaris of Mahindra Tractor show room,

Opp. SBI Vyra Road, Khammam
rep.by its Branch Incharge D.G.V.V.S.Pavan Kumar

..... PETITIONER

AND

1 The Registering Authority/Regional Transport Authority (RTA)
Warangal, AP
2 The Deputy Transport Commissioner Asst. Secretary , Regional Transport Authority, Warangal A.P.
3 The Secretary , Transport, Department Government of A.P.,
Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction, especially in the nature of writ of Mandamus, or any other writ or direction as suitable directing the Respondent to issue a fresh Registration Certificate in the name of the petitioner for vehicle bearing No.AP 36V 7232 in pursuance of their application Dt. 7/10/2003 to the respondent No.1 in consideration of their letter Dt.24/09/2003 and Legal Notice Dt.21/01/2004 .

Counsel for the Petitioner: MR.K.V.SUBRAMANYA NARASU

Counsel for the Respondents: GP FOR TRANSPORT

The Court made the following:

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Transport.

The petitioner filed this writ petition seeking writ of mandamus directing respondents to issue a fresh Registration Certificate in his name for vehicle bearing No.AP 36V 7232 in pursuance of his application dated 7.10.2003 filed before the first respondent herein.

It is stated that the petitioner filed an application dated 24.9.2003 followed by another application dated 7.10.2003 for issuing fresh registration certificate and as the said applications were not considered, the petitioner also issued legal notice on 21.1.2004. But in spite of repeated requests to consider the said applications, the same were not disposed of. Therefore, the petitioner filed the present writ petition.

The petitioner is a non-banking finance company engaged in the business of providing financial services such as hire purchase, lease, loan finance etc., and it is mainly engaged in financing for purchase of vehicles of both commercial and non-commercial. During the course of business, one Bayagani Srinivas had entered into a loan agreement dated 5.6.2003 for acquiring one Tata Indica Deluxe car,

availed a loan of Rs.2,65,000/- from the petitioner and made a down payment of Rs.69,203/- and agreed to repay the balance amount in 36 instalments at Rs.9128/- each with the first instalment commencing from 5.6.2003. Accordingly, the petitioner gave release order authorizing M/s.Surya Motors to deliver the said vehicle to Srinivas under hypothecation with the petitioner. The first respondent herein had issued a Registration Certificate with registration No.AP 36V 7232 on 28.6.2003 by clearly endorsing in the registration certificate that the vehicle is under hire purchase agreement with the petitioner. While so, the petitioner received a notice dated 24.9.2003 from the first respondent terminating the hire purchase agreement. It is the case of the petitioner that the said termination of endorsement has been made without the knowledge or consent, which is based on the forgery committed by the said Srinivas or some other person. The petitioner filed a complaint with the police and FIR No.227 dated 8.12.2003 for the offence under Sections 420, 468 and 471 IPC was registered against Srinivas. It is further stated by the petitioner that instalments were not at all paid by Srinivas and, therefore, the endorsement made in the registration certificate cannot be cancelled. Therefore, the petitioner filed applications before the first respondent to issue fresh registration certificate in the name of the petitioner in respect of the said vehicle.

Counter affidavit has been filed on behalf of respondents accepting that the vehicle was registered on 28.6.2003 in the name of one B.Srinivas under hire purchase agreement with the petitioner. But the said Srinivas has applied for termination of hire purchase agreement on 17.7.2003 and, therefore, it was terminated on 2.8.2003. It is stated that after termination of the agreement in respect of the petitioner, the said Srinivas entered into an agreement with M/s.Laila Finance Limited, Karimnagar on 18.8.2003. It was terminated on 22.8.2003 and again he has entered into hire purchase agreement with M/s.Kusalava Finance Limited, Vijayawada on 26.8.2003. It was also terminated on 6.9.2003. On the objection received from the petitioner on 24.9.2003, further transactions have been stopped.

Thereafter an application for noting the hire purchase agreement with M/s.Vinod Finance Corporation, Hyderabad, is filed and the same has been kept pending. On the complaint made by the petitioner, criminal case in Cr.No.227 of 2003 for the offence under Sections 420, 468 and 471 IPC is filed against Srinivas for forging the signature of authorized signatory and for cheating the company. Similarly, Cr.No.307 of 2004 under Sections 420 and 468 IPC is also filed against the owner of the vehicle for forging the documents and cheating the financier. The said two criminal cases are pending.

The learned counsel for the petitioner submits that when a representation has been filed by the petitioner as a financier stating that the termination of the endorsement in the registration certificate, as if the entire loan amount has been repaid by Srinivas by forging the documents, and the cancellation of hire purchase agreement without giving any notice to the financier is illegal and contrary to provisions of the Motor Vehicles Act, 1988.

In view of the said complaint made by the petitioner, it is the duty of the Registering Authority to make an enquiry and pass appropriate orders. Merely because criminal cases are pending against Srinivas or some other person, who committed forgery of documents, it cannot be said that the Registering Authority is not empowered to take appropriate departmental action under the Motor Vehicles Act and the relevant Rules made thereunder.

Having regard to the facts and circumstances of the case, respondents are directed to consider and dispose of the said application dated 7.10.2003 made by the petitioner, after giving reasonable opportunity to all the concerned and pass appropriate orders within a period of eight weeks from the date of receipt of copy of this order.

The writ petition is, accordingly, disposed of. No order as to costs.

(V.ESWARAIAH, J.)

11.3.2005

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To

1 The Registering Authority/Regional Transport Authority (RTA), Warangal, AP
2 The Deputy Transport Commissioner Asst. Secretary , Regional Transport

Authority,Warangal A.P.
3 The Secretary , Transport, Department Government of A.P., Secretariat, Hyderabad.

4. 2 copies to the G.P. for Transport, High Court Buildings,

Hyderabad (O.U.T).

5. 2 C.D. copies